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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Low-Volume Long Distance Users	)	CC Docket No. 99-249
	)	
Federal-State Joint Board On Universal Service	)	CC Docket No. 96-45

JOINT REPLY COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES AND TIME WARNER TELECOM

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TABLE OF CONTENTS

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The Association for Local Telecommunications Services ("ALTS")[1] and Time Warner Telecom ("TWTC")[2], hereby file these joint reply comments on the proposal for the reform of access charges, price caps, and universal service submitted on March 8, 2000 ("Modified Proposal") by the Coalition for Affordable Local and Long Distance Services ("CALLS").

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1 ALTS is the leading national industry association whose mission is to promote facilities-based local telecommunications competition. Created in 1987, ALTS has offices in Washington, D.C. and Irvine, California and now represents more than 200 companies that build, own, and operate competitive local networks.

2 Time Warner Telecom is a leading optical network, facilities-based provider of integrated telecommunications solutions for businesses. The Company currently serves business customers with last-mile broadband connections for data, Internet, and voice in 21 U.S. markets.

I. INTRODUCTION AND SUMMARY

As ALTS and TWTC have explained, the Modified Proposal is a fatally flawed settlement reached by several ILECs and IXCs for the purpose of advancing their own specific material interests. The CALLS proposal would jeopardize the substantial investments made by facilities-based carriers in reliance upon the FCC's 1997 Order. For this reason, ALTS and TWTC have proffered an alternative plan that does not undermine the growth of competition and that meets many of the consumers' objections to the CALLS plan. The comments filed in this proceeding further support the conclusion that most aspects of the Modified Proposal do not hold up under close scrutiny. Perhaps most telling, a plan that was refashioned to gain the support of the consumer groups is still strongly opposed by those groups as well as the state commenters. The consumer groups, such as NASUCA and CPI, fully grasp that the Modified Proposal would not benefit consumers in the short term because it merely transforms carrier access charges into end user charges, and it offers little more than sham consumer benefits in the form of lower long distance minimum usage charges ("MUCs"). The consumer groups and the states also appropriately argue that the Modified Proposal's transformation of carrier access charges into end user charges would harm consumers' long-term interests by sheltering ILEC access revenues from competition and diminishing the opportunity for facilities-based CLEC entry.

The record is also devoid of any basis for the $650 million so-called universal service fund proposed by the Modified

Proposal. It appears that this "fund" is simply a means of transforming the carrier common line charge ("CCLC") and part of the multi-line business primary interexchange carrier charge ("MLB PICC") into a new subscriber line charge ("SLC"). Because this charge would bear no relation to the costs of the loops to which it is assigned, it would add to the implicit subsidies that the Modified Proposal purports to reduce. Moreover, even if the $650 million were established as a proper universal service fund pursuant to the requirements of Section 254, the Commission would be obligated as a matter of law and policy both to refer the issue to the Joint Board before enacting it and to establish some basis in the record, currently absent, for determining why $650 million is a reasonable estimate of the implicit subsidies in interstate access charges.

There is also no basis in the record for eliminating the application of the X-factor to the common line basket or for increasing the X-factor levels for the switching and trunking baskets. The Commission, therefore, may not adopt these proposals.

In light of its basic flaws, the Modified Proposal could not possibly survive an appellate challenge. Important pieces of the proposal would likely be vacated on appeal, thus changing the balance of the negotiated settlement reached by the CALLS members. This would cause considerable disruption if the Commission were to adopt the Modified Proposal as a mandatory plan for all price cap ILECs. But if the Commission allowed the proposal to become a voluntary opt-in (as CALLS urges it to do),

even partial vacation on appeal would likely render the proposal a nullity since either the IXC or the ILEC members would seek to rescind their consent to the plan.

ALTS and TWTC therefore urge the Commission to reject both the Modified Proposal as well as the more general attempt to rely on negotiated solutions. In the event that the Commission insists on pursuing this approach, however, it should adopt the ALTS/TWTC Plan as described in our comments. That plan will at least increase the short-term consumer benefits through lower end user charges and increase the long-term benefits by establishing the preconditions for facilities-based local entry.

II. THE COMMISSION MUST ENSURE THAT ANY CHANGES TO THE ACCESS CHARGE, PRICE CAPS, AND UNIVERSAL SERVICE REGIME DO NOT JEOPARDIZE THE OVERARCHING GOAL OF ENCOURAGING FACILITIES-BASED LOCAL COMPETITION.

As an initial matter, it is important to place the CALLS plan in the broader regulatory context in which it has been proposed. In 1996, the FCC initiated a review of its access charge system. Substantial comment and debate ensued in which the Commission considered the pros and cons of market-based and prescriptive reductions in access. In 1997, the Commission adopted a compromise order establishing a glide path for reducing access charges over time using a combination of market-based and prescriptive means.[3]

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[3] See Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, First Report and Order, 12 FCC Rcd 15982, ¶¶ 262-274 (1997).

The ALTS member companies invested significant sums of money based upon that 1997 "glide path". ALTS estimates that competitors have invested a total of $30 billion since passage of the Telecommunications Act of 1996, and competitors are currently investing over $1 billion every month in new technologies and services. Companies such as TWTC, Focal, and many others have built networks to compete for local switching and transport business based upon the Commission's "glide path" plan. This growth of competition has had the intended effect - access charges, especially transport offerings, are coming down, and consumers are beginning to benefit from greater competition in that marketplace. While this marketplace is not yet fully competitive, it is clear that the Commission recognized in its order of last year granting substantial pricing flexibility to the ILECs[4] that competitors were beginning to make inroads into serving these markets.

Now the proponents of the CALLS plan have put on the table a radically different plan that substantially undermines the competitive efforts of the entrepreneurial companies. The CALLS proposal would slash access charges to levels that simply cannot be justified on policy or equitable grounds. It is bad policy to allow carriers to rely on one set of rules as a framework for

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4 See Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona LATA, Fifth Report and Order, 14 FCC Rcd 14221 (1999).

raising capital, building networks, and acquiring customers only to alter those rules after carriers have sunk investment in this manner. This kind of "bait and switch" increases the level of regulatory uncertainty in facilities-based entry and increases the cost of capital for expanded entry in the future. In other words, the CALLS approach reduces the likelihood that consumers will experience increased efficiencies in the future.

Some parties assert that the CLECs have no interest in reducing access charges, and that CLECs are seeking a price "umbrella" under which we can offer services more profitably. But no such umbrella will be sustainable in the future. If the Commission stays its regulatory course and sustains the preconditions for facilities-based entry, there will be far too many entrants and far too much sunk investment to sustain any level of pricing discipline among competitors.

ALTS and TWTC therefore urge the Commission to reject the Modified Proposal as well as the very concept of addressing access charge, price cap, and universal service reform in a negotiated agreement. Indeed, for the reasons described in subsequent sections of these reply comments, it is difficult to see how any such industry agreement could be legally sustainable.

Nevertheless, ALTS and TWTC recognize that the prescriptive price reductions included in the Modified Proposal have considerable appeal, especially to long distance carriers. For this reason, ALTS and TWTC have proposed a more moderate version of the CALLS proposal that would reduce access rates but temper the dramatic consequences that the CALLS proposal would have on

emerging competition. In fact, as explained in the ALTS/TWTC Joint Comments, the ALTS/TWTC Plan would reduce usage-based rates (i.e., switching basket, trunking basket, and CCLC rates) by 21% in the first year of the plan while the Commission's existing price cap rules (assuming a 6.5% productivity) would only reduce those rates by approximately 15%. See ALTS/TWTC Comments at 7, 18. The ALTS/TWTC plan would also ultimately reduce the switched access charge levels to the same level as proposed by the CALLS parties over time. This offer demonstrates ALTS/TWTC's good faith effort to work with the Commission to accomplish its needs for price reductions in the coming year.

Furthermore, the ALTS/TWTC Plan contains greater consumer benefits than the Modified Proposal. In brief, the ALTS/TWTC plan proposes to spread greater prescriptive reductions to the common line basket of services. We believe this is consistent with sound public policy and the Commission's prior rulings on access. In the past, the Commission has stated that prescriptive reductions should be applied to those services that encounter the least amount of competition. In this way, those consumers that have fewer competitive alternatives can benefit from price reductions. The CALLS proposal, on the other hand, would reduce those access charges that are going to be coming down anyway, while leaving non-competitive services priced higher than the economically efficient levels. The CALLS plan is thus backwards: it is anti-competitive and anti-consumer.

ALTS and TWTC recognize that our plan may not include the same level of detail as the CALLS proponents. We simply do not

have access to the same amount of data as the ILECs concerning the details of the CALLS plan and the effect on ILEC pricing. Our plan provides an outline of proposed benefits. We would be happy to work with the Commission and the other parties to this proceeding to implement the details of this plan.

III. AS THE CONSUMER GROUPS AND THE STATES HAVE CONCLUDED, THE MODIFIED PROPOSAL DOES NOT DELIVER THE CONSUMER BENEFITS THAT ITS PROPONENTS CLAIM.

The most significant changes to the Modified Proposal from the original CALLS proposal are those intended to ensure that the plan delivers actual short-term benefits to consumers. It is therefore striking that several of the most prominent consumer groups, as well as the states, argued in their comments that consumers would actually be worse off under the Modified Proposal than under the status quo.[5]

In general, the consumer groups agree that, as NASUCA put it, the Modified Proposal "amounts to nothing more than a second attempt by entrenched proponents (with the common goal of avoiding competitive losses) at imposing mandatory cost recovery on a captive customer base." NASUCA Comments at 2. The Modified proposal may satisfy the "needs of its members", CPI Comments at 3, but it leaves consumers "holding the bag." NASUCA Comments at 2.

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[5] Indeed, even some consumer groups cited by CALLS as supporters of the Modified Proposal have denied that they endorse the current or previous versions of the proposal. See, Comments of the National Consumers League and Consumer Action at 1.

Specifically, the Modified Proposal moves ILEC costs from charges paid by long distance carriers to charges paid by end users (mostly residential end users). The ILECs are happy with the proposal because it would "shield access revenues of the ILECs by shifting their recovery to end-user charges" paid primarily residential customers; CLECs generally cannot serve such customers efficiently at this time. CPI Comments at 1 (emphasis omitted); see also NASUCA Comments at 2; Joint Consumer Commenters[6] at 4; State of California & California PUC Comments ("California Comments") at 4. The long distance carriers are happy because the carrier access charges will be reduced by about $3.75 billion in the first year and $5.2 billion over the life of the plan. See NASUCA Comments at 3, 9-10. In sum, the Modified Proposal "merely shifts [access charge recovery] from long distance carriers to end users and from usage charges to flat-rate charges." CPI Comments at 1; see also Wyoming PSC Comments at 3-4.

Remarkably, the CALLS members have apparently found a way to accomplish all of this and still ensure that the ILECs come out even or ahead in terms of interstate access charge revenues as compared with revenues under the existing access charge regime (assuming a 6.5% X-factor). For example, CPI estimates that, even on a net present value basis, interstate access charges will

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6 The Joint Consumer Commenters are the Texas Office of Public Utility Counsel, the Consumer Federation of America, and the Consumers Union.

increase over the five year life of the Modified Proposal as compared to the status quo. See CPI Comments at 4-5.

Moreover, consumers will also suffer over the longer term under the Modified Proposal because it makes it less likely that CLECs will enter the local market and provide lower priced, more innovative offerings. "By transforming carrier access charges [into] end-user surcharges," the Modified Proposal "permits the ILECs to strategically reduce access charges in those areas most susceptible to competitive pressure." CPI Comments at 9-10. While the ILEC margins remain unaffected, the CLECs will have a diminished opportunity and incentive to compete. The point here is not that CLEC revenues should be sheltered from competitive pressure but rather that the Commission should avoid major changes in the existing regulatory regime that will lessen the likelihood of efficient outcomes. Such efficient outcomes are far more likely if CLEC competitive entry drives down carrier access charges than if regulators do so.

The consumer groups as well as the states also agree that AT&T's and Sprint's commitments to eliminate minimum usage charges are unlikely to result in consumer gains. First, to the extent the "no MUC" policy is intended to benefit low income consumers, it is not at all clear that it accomplishes this goal. See CPI Comments at 7 (noting that low volume users may not be low income users). In any event, there are more efficient means of targeting subsidies to low income consumers (such as explicit, targeted subsidies). Id. Second, the MUC costs will likely be recovered through other means, likely higher per minute charges.

See, e.g., State Members of the Federal-State Joint Board on Universal Service Comments at 3-4; CPI Comments at 7-8. In addition, even putting this issue aside, CALLS has overstated the consumer benefits (illustrated in the CALLS "sample bills") that would come from the no-MUC commitments. NASUCA Comments at 14-18.[7] Third, as ALTS and TWTC explained, the question of whether MUCs should be eliminated is in any event irrelevant to the reform of access charges, price caps, and universal service. See ALTS/TWTC Joint Comments at 12-13; see also CPI Comments at 8.[8]

IV. THE MODIFIED PROPOSAL CONTAINS SEVERAL FATAL LEGAL INFIRMITIES.

As the comments demonstrate, the Modified Proposal is as weak on the law as it is in policy. Neither the universal service nor the X-factor components of the CALLS plan could be sustained on appeal.

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[7] As NASUCA explains, the $2.62 savings described in the "sample bills" are illusory because (1) they assume the existence of MUCs, but many carriers do not charge MUCs and a customer could choose not to presubscribe to a long distance carrier; (2) they assume the existence of a flat monthly universal service pass-through charge imposed by AT&T, but AT&T has eliminated such pass-through charges in favor of usage-based universal service pass-through charges; (3) they assume a $1.51 PICC pass through charge, but the current PICC is only $1.04; and (4) they ignore increased levels of universal service pass-through charges that will be levied on end users in the later years of the Modified Proposal. See NASUCA Comments at 15-17.

[8] It also seems likely that competition will eliminate MUCs. For example, MCI has committed to eliminating MUCs without signing onto the CALLS proposal. See MCI comments at 2-3.

A. The Universal Service Fund Cannot Be Adopted As Proposed By CALLS

There are several fundamental reasons why the Commission should not adopt the $650 million universal service fund included in the Modified Proposal. The legal problems with this proposal are so pronounced that they should, by themselves, cause the Commission to reject the Modified Proposal.

First, and most fundamentally, the proposed "universal service fund" is apparently not an explicit subsidy fund at all but rather a means of transforming the carrier common line charge (and a small part of the MLB PICC) into a flat, monthly surcharge on all end users. While it was not apparent from the Modified Proposal itself, the Joint Consumer Commenters seem to indicate that the end user charge that ILECs would levy on end users under the plan in fact results in complete recovery of the $650 million "fund." See Joint Consumer Commenters Comments at 38-39. These fees may therefore be nothing more than new end user charges, essentially new SLCs, to be recovered either as a flat fee or as a percentage of the customer's total bill. See Modified Proposal at 1-2. But a SLC should only be increased above the relevant SLC cap (determined by the type of line) where the interstate portion of the costs of a line exceeds that cap. A uniform, flat fee or a fee set as a percentage of a customer's total bill bears no relation to the cost of the loop serving the customer. Since the new SLC charges therefore apparently bear no relation to the cost of the loop serving a particular customer, the fees include just the kind of implicit subsidies that CALLS purportedly seeks

to eliminate. This aspect of the proposal should therefore be rejected outright as unreasonable.

Second, even if the $650 million SLC increase were actually administered as a true universal service fund, the Commission would be powerless to adopt it at this time because it must refer the issue to the Federal-State Joint Board. See, e.g., California Comments at 7; Missouri PSC Comments at 2. Section 254(a) requires the Commission to "refer to a Federal-State Joint Board under section 410(c) a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) and [section 254]." 47 U.S.C. § 254(a)(1) (emphasis added).[9] Although the Commission is not required to include every possible detail in its referrals to the Joint Board, the Joint Board has not had any chance to evaluate or to form a recommendation regarding the Modified Proposal and the significant changes to universal service that it contemplates.[10] Furthermore, the Commission has recognized the critical role that states play in universal service reform and the profound impact this reform has upon the states.[11] It is therefore not just the law but sound

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9 See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, 11 FCC Rcd 14171, 14234 n.248 (1996) ("Interstate subsidy flows are to be addressed by the Joint Board pursuant to section 254(a)-(e).").

10 Texas Office of Pub. Util. Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999).

11 See Federal-State Joint Board on Universal Service; Access Charge Reform, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, 8084 n.19 (1999) ("Congress

policy to seek the input of the Joint Board. Finally, the Joint Board and the state members of the Joint Board have specifically requested the opportunity to evaluate proposals to remove implicit universal service support from interstate access charges before the Commission takes action.[12]

Third, as several states point out, the record in this proceeding is devoid of any basis for choosing $650 million as an appropriate amount for the magnitude of implicit subsidies in interstate access charges. CALLS provided no data in support of its fund estimate, making meaningful analysis all but impossible. See, e.g., CaliforniaComments at 6 n.10; Iowa Util. Bd. Comments at 5; Wyoming PSC Comments at 2-3. The absence of supporting data may be due to the fact that only AT&T among the CALLS members supports $650 million as the appropriate size of the fund. See Memorandum in Support of the Modified Proposal at 10, n.10. The data provided in the comments in this proceeding confirm the arbitrary nature of the $650 million figure. The Joint Consumer Commenters, for example, have provided some detail as to averaged loop costs and unbundled loop prices in a representative cross-section of the country. See Joint Consumer

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clearly intended that universal service reform be achieved through a combination of federal and state efforts.").

12 See Federal-State Joint Board on Universal Service, Second Recommended Decision, 13 FCC Rcd 24744, ¶ 23 (1998) ("Before taking any final action on removing [implicit] support from interstate access charges, the Commission should first consult with the Joint Board."); Supplemental Comments of the State Members of the Federal-State Joint Board on Universal Service at 2.

Commenters at Exh. 3. This data supports the conclusion that a reasonable forward-looking methodology would yield loop costs far lower than the ones apparently relied upon by AT&T to set the $650 million fund. This appears to be the case even where loops are deaveraged. See id. at Exh. 5. There is every reason to believe therefore that the $650 million fund is unreasonably large.

B. There Is No Basis For Eliminating The X-Factor For The Common Line Basket Or For Increasing The X-Factor For The Switching And Trunking Baskets.

There is also no basis in the record for targeting the application of the X-factor under the Modified Proposal. For example, the Joint Consumer Commenters demonstrate that the costs currently recovered in the common line basket are considerably above the cost levels that a forward-looking cost model would yield. See id. at 19-23, 25. Indeed, the "productivity of the facilities in the common line basket have experienced breathtaking gains in productivity" through efficiencies obtained in xDSL services and second lines. NASUCA Comments at 19. It is therefore impossible to justify the Modified Proposal's elimination of the X-factor for common line elements.

Relatedly, Focal demonstrates the absence of any basis for increasing the X-factor as applied to the switching basket and trunking basket elements under the Modified Proposal. As a result of targeting the X-factor to these elements, the Modified Proposal would effectively set the relevant X-factor at 12%. See Focal Comments at 9. As Focal points out, there is simply no basis for accepting this X-factor as an appropriate level for

switching and trunking elements. See Statement of Jeffrey I. Bernstein (Apr. 3, 2000) at 1-2, attached to the Focal Comments.[13]

There is also no basis in the comments on the Modified Proposal or anywhere else in the instant proceedings for the CALLS selection of "target" ATS rates of $.0055 and $.0065. As with so much of the plan, these rates are simply wild guesses without any foundation in the record or in economic reasoning.

C. In Light Of These Obvious Defects, It Would Be Arbitrary And Capricious For The Commission To Adopt The Modified Proposal As Proposed.

The CALLS members have essentially asked the Commission and interested parties to accept the reasonableness and reliability of their proposals on faith, without delving into the details underlying the Modified Proposal. Yet the Commission is not permitted to do this. In the absence of an independent Commission analysis, based on the record before it, as to the reasonableness and reliability of the data supporting the CALLS universal service fund, its X-factor adjustments, or any other aspect of the proposal, the adoption of the Modified Proposal would almost certainly be unlawful.[14]

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[13] While it has been suggested that the per minute rate structure for switching has resulted in a disproportionately low X-factor for the switching basket, this proposition has little basis in fact. See, e.g., Comments of William E. Taylor in CC Docket No. 96-262 (Oct. 29, 1999) at 6-11 filed with the USTA comments in that proceeding (demonstrating that capacity-based charges should not be adopted).

[14] See Association of Oil Pipe Lines v. FERC, 83 F.3d 1424, 1434 (D.C. Cir. 1996) ("An agency that relies on a study must examine the methodology used to conduct the study"); City of New Orleans v. SEC, 969 F.2d 1163, 1167 (D.C. Cir.

Moreover, there is also no basis for adopting otherwise unlawful rules simply because the rules have been negotiated by industry players. Both the courts and commentators have concluded that an agency must make an independent determination that rules negotiated by certain industry players are just and reasonable and otherwise in accordance with law.[15]

1992) ("We have held that an agency's reliance on a report or study without ascertaining the accuracy of the data contained in the study or the methodology used to collect the data 'is arbitrary agency action, and the findings based on [such a] study are unsupported by substantial evidence'" (citations omitted)).

15 See USA Group Loan Services, Inc. v. Riley, 82 F.3d 708, 714-715 (7th Cir. 1996) (characterizing negotiated rulemaking as an "abdication of regulatory authority to the regulated" and further criticized it as "the full burgeoning of the interest-group state, and the final confirmation of the 'capture' theory of administrative regulation."); Natural Resources Defense Council, Inc. v. E.P.A., 859 F.2d 156, 194 (D.C. Cir. 1988) (per curiam) (holding that while an agency can promise in a settlement agreement to propose regulations that required consent of the regulated parties, "a binding promise [by the agency] to promulgate [a final rule] in the proposed form would seem to defeat Congress's evident intention that agencies proceeding by informal rulemaking should maintain minds open to whatever insights the comments produced by notice under § 553 [of the A.P.A.] may generate."); Kenneth Culp Davis et al., Administrative Law Treatise § 7.14, at 268 (3d ed. Supp. 1999) (finding that "[m]ost rulemakings effect both the interests of small groups of firms, each of which has a great deal at stake, and large groups of people, each of whom has a small amount at stake. The small groups have an enormous practical advantage over the large groups when an agency uses a decisionmaking procedure like Reg-Neg that puts a premium on the amount of resources groups are willing to commit to the decisionmaking process."); Stephen Breyer, Regulation and Its Reform 108 (1982) (the result of a negotiated rulemaking "is a standard that departs from the policy planner's ideal insofar as it is designed to secure the parties' reluctant agreement, or at least a reduction in the vehemence of their opposition. To this extent, the ideal of the rational standard is sacrificed to the criteria of the negotiator -- sometimes to the point where the net result is an agreed-upon but ineffective standard.").

Any one of the policy defects or legal infirmities described above would cause at least some portion of the Modified Proposal to be unsustainable on appeal. Of course, the effect of such a reversal would depend on whether the Commission were to adopt the Modified Proposal as a mandatory plan for all price cap ILECs or a voluntary opt-in for the CALLS members.

If the Commission were to attempt to mandate the application of the Modified Proposal in its current form to all price cap ILECs, the consequence of a partial vacation on appeal would likely be to cause the still valid portions of the CALLS plan to remain in effect. Whatever careful balancing of interests the CALLS members may have achieved and the Commission had accepted as reasonable would therefore be disturbed.

If, on the other hand, the Commission were to attempt to establish the Modified Proposal as a voluntary opt-in for price cap ILECs (as CALLS asks), a partial repeal of the plan on appeal would likely cause ILECs to argue that they should be allowed to opt-out since the terms of the plan have changed and are no longer favorable. Alternatively, the IXCs might challenge the plan after a partial repeal on the basis that the plan no longer adequately protects their interests. In either case, the reversal of one part of the plan on appeal could well render the entire plan a nullity.[16]

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[16] Of course, there are other major problems with an opt-in approach. For example, such an approach would still require that the X-factor remand be concluded and an estimate of implicit subsidies in access charges be established for those price cap ILECs that do not opt-in. There would also be some question as to which carriers would be required to

Thus, regardless of whether the Commission were to adopt the Modified Proposal as a mandatory plan for price cap ILECs or as a voluntary opt-in, the almost certain vacation of some parts of the plan on appeal would result in unwinding the very essence of the compromise itself.

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contribute to the CALLS universal service fund (if properly structured as a true subsidy fund under Section 254), since it would apply only to certain parts of the country.

V. CONCLUSION

The Commission should reject the CALLS Modified Proposal or adopt the ALTS/TWTC Plan as described.

Respectfully submitted,

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